SUPREME COURT, U.S.
OCT 11 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-638

LEO JONES,
Petitioner

vs.

STATE OF FLORIDA
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FIRST DISTRICT STATE OF FLORIDA

HONORABLE
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IN THE

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No.

LEO JONES,

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vs.

STATE OF FLORIDA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FIRST DISTRICT STATE OF FLORIDA

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner LEO JONES, prays that a Writ of Certiorari issued to review the judgement of the District Court of Appeal, First District, State of Florida, entered in the above entitled case on April 17, 1973 Certiorari denied by the Supreme Court of Florida on July 13, 1973.

CITATION TO OPINIONS BELOW

The opinion of the District Court of Apeal is printed in the Appendix at page 1a.
The Judgement of the Supreme Court of Florida is printed in the on
Apendix at Page 2a.

JURISDICTION

The original verdict and Judgement in the Circuit Court of The Fourth Judicial Circuit, In and for Duval County, Florida was entered on January 4th and 7th, 1972. An Appeal was taken by the Petitioner to the District Court of Appeal, First District, State of Florida and that Court entered judgement on April 17, 1973, Ap. 1a. A Petition for Rehearing was deniedon the 17th of May, A.D. 1973. A Petition for a Writ of Certiorari to the District Court of Appeal, First District, State of Florida was promptly filed in the Supreme Court of Florida on May 31, 1973, The Supreme Court of Florida entered its judgement on July 13, 1973, ruling that it did not have jurisdiction to hear the Writ. printed iin Appendix at Page 2-a The jurisdiction of this Court is invoked under Title 28 U.S. C, Section 1257 (3).

QUESTIONS PRESENTED

1: Whether a match box of heroin which fell from the waist band of a defendant's pants while being placed under illegal ar-arrested and searched is admissable into Evidence against the rest and searched is admissable into Evidence against the defendant over his objection that said box of heroin was illegally seized frmo him by an illegal search of his person in violation of his rights secured under the Constitution and laws of the United States.

2. Whether the arrest of a defendnt is legal when the defendant was riding as a passenger in an automobile stoped by a Police officer for allegedly speeding where the Police pursued said automobile because the officers concluded that the automobile in which the defendant was riding was stolen, simply because is was a convertable automobile with a dealers' tag in which (3) black males were riding in a community made up of predominately black residents and where the officer had no information that a similar car was stolen and where in truth and fact said automobile was not stolen and the defendant had not committed any crime known to the officer for which he could be arrested, and under these circumstances whether a match box of heroin which fell from the waist band of the defendant's pants while being arrested and searched is admissable into evidence againnst the

defendant over his objection that said match box of heroin was illegally seized from him by an illegal search of his person in violation of his rights scured under the Constitution and Laws of he United States.

The Federal Questions presented here were first raised by a Pre-Trial Motion to Suppress (App. 3a). These questions were raised by objection to the trial and also in the Motion for a New Trial. The same Federal questions were raised in the assignment of Errors filed in the Appeal To the District Court of Appeal, First District, State of Florida. The Trial Court and Appellate Court ruled against Assertion of the right to the Petition.

AMENDMENT 4

UNREASONABLE SEARCH AND SEIZURE

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ADMENDMENT 14, Section 1

DUE PROCESS AND EQUAL PROTECTION OF LAW . . .

nor shall any State deprive any person of life, liberty, or property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

The defendant, LEO JONES, was arrested on November .7, 1971, in Jacksonville, Duval County, Florida on several charges all of which were found untrue. On November 23rd, 1971, an information was filed in the Criminal Court of Record for Duval County, Florida aganst defendant Leo Jones, charging him unlawfully and knowingly having in his possession in Duval County, Florida, a certain Narcotic drug, to-wit; Heroin. A Motion to Suppress the evidence was filed on December 13, 1971. An order denying the motion to suppress was entered on December 16, 1971. The defendant was tried before a Jury and found guilty as charged in the Information on January 4th, 1972 (R-67). Motion for New Trial was filed on January 6th, 1972 and denied on the 7th day of January, 1972. The defendant LEO JONES, was adjudged Guilty of Possession of Narcotic Drugs and given a Sentence of

Five (5) Years (R-11). Notice of Appeal was filde in the District Court of Appeal, First District, State of Florida on January 7th, 1972 (R-12).

On April 17h, 1973, the District Court of Appeal, First District, State of Florida enered its judgement affirming the verdict, Judgement and Sentence of the Trial Court (Ap. 1a). A Petition for re-hearing was denied by the District Court on the 17th day of May, 1973. A Petition for a Writ of Certiorari to the District Court of Appeal, First District, of the State of Florida was promptly filed in the Supreme Court of Florida on May 31, 1973. The Supreme Court of Florida entered its judgement on July 13, 1973, ruling that it did not have jurisdiction to hear the Writ, (Ap. 2). Petitinoer having exhausted his remedies before the highest Appellate Court in Florida files this his Petition for Writ of Certorari to the District Court of Appeal, First District, State of Florida in this Court raising the Federal Question set forth in this Petition.

REASONS FOR GRANTING THE WRIT

The Federal question raised in this Petition rest upon the fundamental question of individual Liberty as protected by the 4th Amendment through he aplication of the 14th Admendment to the Consitution of the United States. As this Court has said throughout its history it is the duty of the Courts to protect the liberty of citizens as provided in the Constitution. The rule applied by this Court is a general one -- no search may be made of a person or his property without a search warrant. This Court ruled in Coolidge v. New Hampshire (1971) 91 S. Ct. 2022, 403 vs. 443 , 29, L.Ed. 564: See Insert.)

In this suit a Motion to Suppress the evidence was made upon the grounds the the match box of heroin which fell from the waist line of defendant fell because the Police officers were arresting and searching th defendant with probable cause. The issue of probable cause for arrest is thoroughly discussed by this Court in *Henry v. United States, Supra*, and in that opinion this Court ruled::

> "To repeat, an arrest is not justified by what the subsequent search discloses. Under our system suspicion is not enough for an officer to lay hands on a citizen." (p 172).

It is clear from the record that the defendant was a passenger in an automobile with two other black men one of whom was operating the automobile. The officers took up pursuit of the automobile because they felt that three (3) black men had no legal right to operate a convertible automobile with a dealer's tag in thier community and concluded that the automobile was stolen. (App. 20a) It is clear that the white police officers had a color prejudice against all black people which was the basis of their suspicion. To allow police officers to use their race and color prejudices as a basis for probable cause will not only subject this defendant to an illegal arrest and search, it subjects all black citizens to similar treatment. Not only is probable cause for arrest based on racial color prejudice a denial of liberty under the 4th Admendment as applied under the 14th Admendment, it is also a denial of the equal protection of the law also secured to the defendant by the 14th Admendment.

In order to assure black citizens equal protection under the law in their pursuit of liberty, this Court should Grant Certiorari in this case and reverse he Judgement of the District Court of Appeal, First District of Florida and direct that this Judgement and sentence of he Petitioner be vacated and set aside.

A reading of the record will reveal that the two (2) arresting officers gave completely different testimonies concerning the location of the automobile in which the defendant was riding when the automobile was first spotted and followed by the officers. Officer J. A. Stalma stated that they first noticed this vehicle when it was travelling at a high rate of speed coming down Jefferson Street crossing over Union. (App. 6a). Officer Jerry A. Waxer testified that they first noticed the vehicle in which the defendan was riding when it was parked n the 800 block of Beaver Street nearly in front of a Fish Market that had been broken into sometime before day break of the same day. The Officer testified that this was approximately 1:15 p.m. in the day when they saw one of the passengers in the car in which the defendant was riding place two bags of shrimp in the trunk of the car (App. 13a). It is clear from the testimony of the arresting officer that they did not discover the shrimp in the trunk of the car after it was stopped and for that reason developed a suspicion that the shrimp were stolen. I is equally clear that the placing of shrimps properly bagged in the trunk of an automobile parked at 1:15 p.m. in front or nearly in front of a fish market

which had suffered a break-in and theft of shrimp before day break that same morning, could hardly be the basis of probable cause to arrest the defendant on a charge of Breaking and Entering that same fish market. The shrimp were not stolen and no normal person would believe that a person who had broken into a fish market that morning would return at 1:15 p.m. in the day time, park his car nearly in front of the same fish market and then place the stolen shrimp in the trunk of the vehicle.

The only conclusion one can fairly reach after reading the record in this case is to conclude that the arresting officers, because of their racial prejudice, concluded that the Dodge challanger convertible with a dealer's tag in which the defendant was riding was stolen because these (3) black men had no right to be in possession of this type of automobile. Based on the officers conclusion on this point it is fair to say that if this defendant and and his companions had been white the defendant would not have been arrested and tried for this offense.

It is respectfully submitted by petitioner that is is necessary that this honorable court settle he question presented by his Petitioner for his sake and for the sake and welfare of all black citizens subjectt to the same type of unreasonable interference with their liberty; that equal treatment under the law will be a little closer to reality so far as it affects black citizens in the State of Florida and the United States.

WHEREFORE, your Petitioner respectfully prays that a Writ of Certiorari may issued out of and under the seal of this court, directed to theDistrict Court of Appeal, First Dis-State of Florida may be reviewed and reversed by this Honorable Court.

Respectfully Submitted,

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1042 Broad Street
Jacksonville, Florida 32202

Counsels for Petitioner

. . . . . .

I DO HEREBY CERTIFY that on this 10th day of October, A.D. 1973, I mailed true and correct copies of the foregoing Petition for Writ of Certiorari the the Honorable Robert Shevin, Attorney General, State of Florida by placing the same in a properly addressed envelope, to the Capitol Building, Tallahassee, Florida, with sufficient postage thereon and depositing the same in the United States Mail.

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By: .....

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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JANUARY TERM, A.D. 1973.

Not Final Until Time Expires To File Rehearing Petition And Disposition Thereof Is Filed

Case No. Q-350

LEO JONES

Appellant

vs.

STATE OF FLORIDA

Appellee

Opinion Filed April 17, 1973

AN APPEAL FROM THE CRIMINAL COURT OF RECORD FOR DUVAL COUNTY

R. Hudson Olliff, Judge

Ernest D. Jackson, Sr., Jacksonville. Florida for Appellant

Robert L. Shevin, Attorney General; and Michael M. Corin, Assistant Attorney General, for Appellee.

PER CURIAM: In this appeal a final judgement pursuant to a jury verdict of guilty of possession of narcotic drugs, to wit: herion, the appellant's counsel has injected a race issue which we think is not suported by the record.

The police officers were investigating a burgulary of a sea – food market in Jacksonville, Florida, and in seeing a Dodge convertible leaving a seafood market with three occupants therein, the officers started pursuit. While the officers did not have any probable cause to stop the Dodge at first, the driver of the Dodge started speeding, getting up to as much as 85 m.p.h., which gave the officers probable cause to stop the car and arrest the driver. After the arrest, the officers saw some shrimp in the trunk of the car and placed the appellant and the other occupant of the Dodge car under arrest for burglary and auto theft. About this time the appellant appeared to become excitedand attempted to turn about, a struggle between the officers and the appellant ensued. A small matchbox fell from the appellant,s pants or belt it was picked up by an officer and found to contain 14 decks of heroin.

Appellant contends that the search was illegal and that the trial court was in error in not suppressing the matchbox of heroin.

We cannot agree with the appellant. While the officers may have been over zealous at the beginning of the incident which led to the arrest for a traffic violation, insofar as the search of the appellant was concerned, the search was perfect legal. The contraband fell from the appellant's clothing in front of the officers. No personal search was necessary.

The other point raised by appellant was without merit.

The search being legal, the trial court was correct in denying the motion to suppress.

Affirmed.

SPECTOR, Chief Judge, RAWLS and JOHNSON, JJ., CONCUR.

SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1973

FRIDAY, JULY 13, 1973
Case No. 43,881
DISTRICT COURT OF APPEAL
FIRST DISTRICT
No. Q-350
LEO JONES
Petitioner
vs.
STATE OF FLORIDA
Respondent

This cause having been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without juridiction, it is ordered hat Petition for Writ of Certiorari be and the same is hereby denied.

ROBERTS, Acting Chief Justice, ERVIN, ADKINS BOYD and McCAIN, JJ., concur.

A True Copy

CC: Hon Raymond E. Rhodes, Clerk
Clerk, Crminal Court of Record.

TEST:

Hon. R. Hudson Oliff, Judge
Hon. Ernest D. Jackson, Sr.
Hon. Michael M. Corin

Sid J. White
Clerk, Supreme Court
By: Kay D. Yent
Deputy Clerk

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DUVAL COUNTY, FLORIDA
CIVIL ACTION No. 71-6334 -- DIVISION - B

STATE OF FLORIDA

Vs.

LEO JONES, Defendant

MOTION TO SUPRESS EVIDENCE

Comes now the Defendant, LEO JONES, by his undersigned Attorney and move the Court Pursuant to Rule 1.90 (h) (1) of Florida Rules of Criminal Procedure to Suppress as evidence in this case Certain Narcotic Drugs allegedly removed from the person of the Defendant upon the grounds that said Narcotic Drugs were obtained through an Unlawful search and Seizure upon the person of the Defendant as alleged: to-wit; his body in violation of the Defendant's Constitutional Rights secured under the Constitution and Laws of the State of Florida illegal acts are more particular described as follows:
and the Constitution and Laws of the United States; the specific

(1). The alleged property was illegally seized without a Warrant.

(2). The alleged property was illegally seized without a legal arrest from the body of the Defendant which was alleged to be on his person at the time said illegal Search took place.

WHEREFORE, the Defendant moves the Court to Suppress as Evidence in this Case, any of the property obtained through the Unlawful Search and Seizure as alleged herein.

IN THE CRIMINAL COURT OR RECORD
IN AND FOR DUVAL COUNTY, FLORIDA
DIVISION "B"
STATE OF FLORIDA

vs.

LEO JONES

No. 71-6334

TESTIMONY of J.C. STELMA and JERRY A. WAXER, taken before the Honorable HUDSON R. OLIFF, Judge Criminal Court of Record, Division "B", December 16, 1971, in Courtroom Number Eight, Duval County Courthouse, Jacksonville, Florida, and as reported by Dorothy A. Crews, an Official Deputy Court Reporter.

APPEARANCES:

HARRY SHORSTEIN, Assistanat State Attorney.

ERNEST D. JACKSON, Attorney for Defendant.

J. G. STELMA

a witness, called at the instance of the State, after first being duly sworn, was examnied and testified as follows:

DIRECT EXAMINATION

BY MR. SHORSTEIN:

Q. Your name is J. A. Stelma?

A. Officer J. G. Stelma.

Q. And you are a member of the Sheriff's Office, is that right?

A. Yes, I am.

Q. On November 17, 1971, you were on duty driving in a patrol car with Officer Waxer?

A. Yes, sir, I was.

Q. Directing your attention to approximately 1:15 P.M. on November 17, 1971, did you have an opportunity to come in contact with a white-over-blue Dodge convertible?

A. Yes.

Q. Where was that at?

A. Approximately in the area of Jefferson and Union Street when we first spotted this vehicle. This vehicle was headed north on Jefferson crossing Union.

Q. Is this in Duval County?

A. Yes, it is.

Q. Prior to spotting this vehicle, had you and Officer Waxer had an oportunity to investigate or write an offense report report regarding a burglary where some shrimp had alledgedly stolen?

A. Yes, sir.

Q. And tell the Court briefly, if you will, the circumstances surrounding that offense report.

A. We were called -- this was the second call of the morning -- it was in the 800 block of West Beaver Street, to the Seaside Poultry Company. A burglary had been committed there and -- sometime in the early morning hours, or the night hours. The investigation revealed that there -- it revealed that here was a large number of shrimp missing and some other poultry and seafood.

Q. Now, going back to when you spotted this vehicle, what, if anything , unusual did you see at the time?

A. This vehicle was traveling at a very high rate of speed coming down Jefferson Street crossing over Union when we first noticed it. We then (turned off Union on Jefferson) pulled off of Union onto Jefferson, headed north giving pursuit to the vehicle. At his time the firs thing that entered our mind is possibly this vehicle was going to one of the emergency hospitals. After this vehicle crossed State Street proceeding still north on Jefferson at still the high rate of speed, we then put on our emergency equipment with lights and siren and pursued his car at speeds up to eighty and eighty-five miles per hour. As this vehicle passed the Third and Jefferson area, it still had not slowed down. We was putting on the air that we had one vehicle running from us headnorth on Jefferson approaching the hospital area. This vehicle then made a turn in the west direction on West Fourth Street off Jefferson Street. We then stopped the vehicle on Jefferson -- excuse me, on West Fourth Street, about forty-five feet west of Jefferson Sreet. The vehicle pulled up to the curb, stopped, and started again which led for about fifteen feet, and then came to a complete stop. We got out of our vehicle, went up to the automobile, immediaely placed the driver under arrest for attempting to elude police officers by flight and speeds up to eighty-five miles an hour in a thirty-mile zone. We called for a wrecker. At At the same time we were trying to get a trace-down on the vehicle tag number to see if it had been stolen. We couldn't get anything from NCIC and FCIC at this time.
We then went back to the vehicle to the other occupant in the vehicle. One -- it would be the defendant Mr. Jones -- was sitting in the front right seat. Another gentleman was in the reas seat. We then started to check the vehicle. We asked both occupants to get out of the vehicle and not to leave the area. By this time, we had assistance at the scene of two other officers. This time --

Q. Just a minute. Had you seen any shrimp in this automobile prior to this time?

A. Prior to this time?

Q. Yes, sir.

A. No, sir, we was getting ready to check the vehicle. We

wanted these occupants out for our self-protection, you know, in case there was something in the car and it turned out to be a stolen vehicle.

We placed the occupants on the side of the vehicle with the other officers guarding them. We then went to the rear of the vehicle and opened the trunk. As soon as we opened the trunk, we saw two large bags of shrimp, in the area of maybe ten to fifteen pounds per bag. Also, we noticed in the back seat a small box that had been wrapped and taped, this we didn't checked as yet because we didn't know what we had here. As soon as we saw the shrimp, we -- and then we said we remembered the burglary earlier in the morning where there was a large number of pounds of shrimps stolen. We then went over to the two occupants and placed them under arrest for burglary and auto theft.

Q. Was one of these Jones?

A. Yes, sir, Mr. Jones. At this time, Mr. Jones became very excited and attempted to turn around as if to turn toward the project area at Fourth and Jefferson. Officers Richey and Warden, who were assisting us at the time, grabbed Mr. Jones by each arm. He struggled and I walked over to them, and I said, "Be careful. He's going to try to get away." And at this time in the struggle, Mr. Jones had a small matchbox between his pants and his shirt. It was -- you know, in there, tucked in between there. This popped out of his pants and fell to the ground during the struggle. I picked up the box and opened it, and counted fourteen decks of heroin.

Q. Now did you or any of the officers actually pull the matchbox out of him or did --

A. No, sir.

Q. You did not take it from him?

A. No, sir.

Q. And from where did you physically take the box?

A. I physically got the matchbox off the ground between his feet.

Q. And did you, after this, turn this box over to investigative at vice squad?

A. Yes, sir, they were on the scene.

MR. SHORSTEIN: I have no further questions.

CROSS EXAMINATION

BY MR. JACKSON:

Q. I believe you said that you went back to the automobile to ask these two occupants to get out?

A. Yes, we did.

Q. At that point, had you observed anything that this defendant was doing?

A. No sir, not at this time they weren't doing anything.

Q. Just sitting in the vehicle?

A. Yes sir, sitting in the vehicle.

Q. So when you asked them to get out, you hadn't searched them at that ime?

A. No, sir.

Q. You told them not to leave the area?

A. Yes, sir.

Q. Why was that?

A. For the fact that we had still not gotten a check-back on this vehicle. Number two, we had not searched the inside of the vehicle yet. We didn't know what was in it.

Q. You didn't know?

A. Yes sir.

Q. Now, then you started searching the automobile?

A. Yes, sir.

Q. Did you have a search warrant at that time?

A. No, sir.

Q. Did anything prevent you from getting a search warrant?

A. At that time?

Q. Yes, Sir.

A. Yes, it did.

Q. What?

A. The area, the time involved in this search, and we had a wrecker coming because we had legal reason to impound this car. We were searching this car for a stolen vehicle, and we were waiting for the report to see that everything in it was listed.

Q. In other words, you didn't -- in other words, you had no warrant to search that car?

A. I didn't need a search warrant.

Q. You searched it because you thought you didn't need one?

A. I searched it because the man driving was placed under

arrest, he eluded an officer at high speed and attempted to get away. We thought it was a stolen vehicle because of this, and it's my duty to check this vehicle.

Q. Did you check it?

A. Yes, I did.

Q. Was it stolen?

A. The check hadn't come back at this time.

Q. Has the vehicle been checked?

A. The vehicle was being checked at this time.

Q. Well, did it turn out to be stolen?

A. At the end of the whole incident, no, sir.

Q. It was not stolen then?

A. At the end of all of this, it came to be not stolen.

Q. Well, now, you said that you immediately suspected the fellows of having broken into the shrimp store?

A. That's correct.

Q. What caused you to do that?

A. We went into --

Q. Before you went in the trunk?

A. Before the trunk, we --

Q. Yes, sir.

A. Well, before the trunk, I didn't have any suspicions then of burglary.

Q. You didn't?

A. No sir, not until I searched the vehicle.

Q. In other words, the only suspicion was that the car was possibly stolen?

A. That's correct.

Q. And you had already arrested the driver?

A. That's correct, for traffic charges.

Q. For traffic charges?

A. That's correct.

Q. So this defendant was just sitting in the car along with another fellow and he hadn't done anything, is that right?

A. Not at this time, no, sir.

Q. So you told him to get out and stand there?

A. That's correct.

Q. And he stood there?

A. That's correct.

Q. Then you said you looked in the back of the car and found some shrimp?

A. Yes, sir, that is correct.

Q. Did you find anything that belonged to this defendant?

A. No sir, I didn't find -- I didn't know if it belonged to them or not.

Q. But then you said he's under arrest at that point, is that rigth?

A. That's correct.

Q. Without any more, you said that?

A. After searching the vehicle and we found what we found, we had probable cause and we -- for burglary and auto theft, and we placed them under arrest.

Q. Then you said you were -- the defendant attempted to leave, is that right?

A. That's correct.

Q. And ya'll grabbed him?

A. The other two officers that assisted us grabbed him by the arm, and they --

Q. Was he under arrest at that point?

A. As soon as I placed him under arrest, he was under arrest.

Q. At the time they grabbed him, was he arrest at that time?

A. Yes, sir, he was.

Q. What For?

A. For burglary and auto theft.

Q. And what evidence you had that he was involved in burglary and auto theft?

A. The shrimp in the vehicle, the high rate of speed on Jefferson Street, the fact that it did not not stop under the conconditions that we were using, and, also that fact that af-

ter he was placed under arrest, he became very nervous and started struggling away from us. This was the reason.

Q. After he was placed under arrest he became very nervous and excited?

A. That's right.

Q. You placed him under arrest at that point; that is, before he became very nervous and excited?

A. Yes sir.

Q. So you placed him under arrest simply because you say that you had -- the car was traveling at a high rate of speed driven by someone else that you had already placed under arrest for traffic violation, and then you chose to search the car, and then you found shrimp in the back of the car?

A. Right.

Q. Now, were the shrimp stolen?

A. At this time, I suspected they were.

Q. Was the shrimp stolen?

A. At this time, I suspected they were.

Q. Did it turn out that way, I mean?

A. At the end of the investigation?

Q. Yes, sir.

A. No, sir they were not.

Q. They were not?

A. No, sir.

Q. And the car was not stolen?

A. No, sir it was not.

Q. The defendant was not driving the automobile, was he?

A. No, sir, he was not.

Q. And the car was not -- it did not belong to the defendan?

A. No, sir.

MR. JACKSON: Nothing else.

MR. SHORSTEIN: I have nothing else Your Honor.

THE COURT: Thank you very much. Are there any other witnesses?

MR. SHORSTEIN: No, Your Honor, Officer –

MR. JACKSON: I want to call the other officer, Your Honor.

THE COURT. Bring in the other officer, please.

JERRY A. WAXER,

a witness, called at the instance of the defendant, after first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JACKSON:

Q. Would state your name, sir?
A. Jerry A. Waxer.
Q. J-e-r-r-y?
A. Right.

Q. Officer Waxer, on or about November 14th, I believe, no, November 17th, 1971, I believe is the date you were parcipating in the arrest of the defendant Leo Jones?

A. Yes sir.
Q. Where was he arrested?
A. Where?
Q. Yes, sir.

A. Approximately Fourth and Jefferson, right around the corner from there.

Q. On Fourth and Jefferson?
A. Right around the corner, four houses down.
Q. Was he riding in an automobile?
A. Yes, he was.
Q. Was he driving or was he–
A. He was not driving.
Q. Was he a passenger?
A. Yes, he was
Q. When did you first notice this automobile?

A. I noticed the automobile at approximately Beaver and Davis.

Q. Now, was this automobile traveling at a high rate of speed?

A. No, it wasn't.

Q. It was not traveling at a high rate of speed?

A. No.

Q. Did you follow behind this automobile?

A. Yes, we did.

Q. Did you have any reason for following behind it?

A. Yes, we did. I had several reasons for --

Q. What were they?

A. What were they?

Q. Yes, sir.

A. We were coming down Beaver, about Beaver and Lee, and I saw the vehicle, which was a Dodge Challenger convertible, and they were putting shrimp -- two bags of shrimp in the trunk of this vehicle. I recalled in my mind that earlier in the day at a seafood center on Beaver Street, we had written a report -- I had written a report on a B&E to that store, and one of the items miss ing happened to be shrimp.

Q. And so -- in other words, you saw the shrimp being placed in the back of that automobile where about?

A. Whereabouts was it placed? Well in the trunk.

Q. Where was it being placed in the trunk? Where was the car located?

A. The car was located at approximately the 800 -- the the last digit, says 890 Beaver.

Q. Nine hundred block of --

A. Right past that -- I believe it's the Pelican Liquors on the corner.

Q. So this car was stopped there?

A. Yes, it was.

Q.This car was stopped up there --that's just above Davis Street, west of Davis on Beaver?

A. Well, it's on Beaver Street coming towards Jefferson. It's already passed Davis.

Q. East of Davis?

A. Right.

Q. And this car was stopped there?

A. Yes, sir, when I saw it, it was stopped.

Q. It was stopped. So the car was stopped and you saw somebody -- isn't the market located right there?

A. In the vicinity, yes.

Q. Isn't there a fish market located there?

A. I stated that we wrote a a report from the fish market earlier in the day.

Q. So when you came up, you saw this car, then. in front of the fish market, is that right?

A. I don't recall whether it was in front of the fish market or not, but I reember in that general vicinity.

Q. In that general vicinity, there's a fish market on the right hand side next to that bar, isn't that right? The bar is on the corner of Beaver and Davis and right behind the bar, there's a fish market, isn't it?

A. No, it's not behind --

Q. On Beaver Street, I mean.

A. Right, it's down on Beaver Street.

Q. In the same block?

A. Yes sir.

Q. You saw this car parked in front of this fish market?

A. Well, I stated I didn't -- I don't recall whether or not it was in front or not.

Q. In that general vicinity, though?

A. Yes sir.

Q. And then you saw some fellows putting some shrimp into the trunk of this particular car, isn't that right?

A. Right.

Q Then the car starter -- then the people got in the car and drove off, is that right?

A. Yes.

Q. You followed the car?

A. Yes.

Q. Now, when had the break-in taken place?

A. Sometime from the time they closed the store and opened the store in the morning from the previous day.

Q. That was the previous day?

A. From the time they closed the store that evening of the previous day until they opened up the following morning.

Q. So when they opened up the following morning, they discovered that someone had broken in that same fish market?

A. Right.

Q. And you went out and checked it out that morning earlier?

A. Right.

Q. About what time of the day was that?

A. I don't recall the exact time.

Q. Approximately, sir was it about twelve?

A. Before twelve.

Q. When you saw this car out there near the front of this fish market, what time of day was that?

A. What time did I see the car in front?

Q. Yes, sir.

A. Approximately twenty minutes after one.

Q. It was about good six or seven hours after this so-called break-in, isn't that right?

A. I havent computed it, but is was a little after -- like I say, I didn't know when the break-in had taken place. The owner didn't either. It was just this series of time that we had to go by.

Q. When you saw those shrimp being put in, immediately you said that someone had broken in this place earlier and your mind fell on the break-in, and that's why you followed this car?

A. Pardon me.

Q. I believe you testified that when you saw those fellows putting the shrimp in the car and they took off and started moving down Beaver Street. you followed that car because of the fact that you saw them put the shrimp in and you were suspicious about them being the people that broke in, is that right?

A. That had entered my mind, but one of the main reasons why we did follow the car was to check on the manufacturer's tag.

Q. So that's why you followed the car?

A. There were several reasons involved. We weren't intentionally saying -- like I I didn't say, hey, you know, look over there. They did it.

Q. You-all didn't discuss it? You-all discussed it didn't you?

A. Well, I -- if you want to call discussing it saying, "See that Challenger pulling off. he's got a manufacturer's tag on iit," and so forth, then --

Q. Did you say something about the shrimp?

A. Yeah, I believe I did. I said they were putting some shrimp in the trunk.

Q. That's what you-all were talking about.
Then you-all took off and followed this car?

A. Not directly behind. We had to stop at the light and they had the jump on us.

Q. So then they drove -- from where you illustrate the place to be, they drove about a block and a half to Jefferson, right?

A. No. It would be more so probably -- probably two blocks.

Q. That's Madison. That's only one long block there.

A. Well, Madison and Davis run the same way. It would be Madison and Beaver, would be the first block and Beaver and Jefferson would be the second block.

Q. So you followed them that long block and then turned left on Jefferson, is that right?

A. Yes sir.
Q. What hapened after they turned left on Jefferson?
A. They caught the light at State and Jefferson.
Q. And they proceeded ahead of you?
A. Well, no. They were stopped in front of us.
Q. And then you pulled up behind?
A. We were behind them.

Q. And the light changed and did you turn -- did they turn did they turn left on Jefferson?

A. No they had already stopped at Jefferson and State Street, and we were behind them.

Q. I see. When you stopped at Jefferson and State, the light changed and they pulled off?

A. Uh-huh.
Q. Well did you follow behind?
A. We tried to.
Q. What did the driver do?
A. He accelerated to a high rate of speed.

Q. Then you drove on across State on down Jefferson towards Fourth Street, right?

A. Right.
Q. That was about six blocks, five or six short blocks, right?
A. Well, I don't know what --it was more like seven or eight blocks.

Q. And that's between Fourth and State, right
A. Right. It's the project -- the project is there and the playground.
Q. Then they turned left of Fourth Street?
A. On Fourth Street, yes.
Q. And the car turned left, did you stop the car or the driver stop the car?

A. Well, the driver had control of the vehicle. We were behind them.
Q. In other words, you didn't --
A. We had our blue lights and siren on all the time doing eighty-five, ninety miles per hour.

Q. Where did you turn your siren on?

A. Approximately, I believe it was the street after Orange I believe it's North Street Court.

A. Yes sir.
Q. In other words --

A. We turned our siren on Jefferson Street, but we were passing the streets coming out of the project. you see.

Q. You were on Jefferson north?
A. Uh-huh.
Q. That's where you turned your siren on, right?

A. That's where we put on our emergency equipment to follow this vehicle to see why he was eluding us.

Q. How far did you travel from that point to where they turned off?
A. I don't know approximately.
Q. About a block and a half?
A. A block and a half?
Q. Yes.
A.Evidently not. Not a block and a half. From North to Fourth is a good six, seven blocks.

Q. It is?
A. Yeah.
Q. So then they turned off and they stopped, is that right?
A. Right. They stopped after they turned onto Fourth.

Q. You didn't pull in front of them and block their car or anything?

A. They had already stopped the vehicle.
Q. They stopped the vehicle?
A. Right.
Q. Did the driver get out of the automobile?
A. As soon as we pulled up?
Q. Yeah.
A. No, I told him to step out.
Q. Did he?
A.Yes.

Q. Did you take him back to your automobile?

A. I walked up to the driver and I met him halfway. I ask him for his drivers' license. He didn't have one I told him he was under arrest for operating a motor vehicle without a drivers license, for excessive speed, reckless driving, and attempting to elude a police vehicle.

Q. What did the defendant do at that time, anything?

A. I couldn't vouch for what the defendant had done at that time because I was putting the driver under arrest.

Q. Had you observed him doing anything at that time?

A. I wasn't watching the defendant at that time.

MR. JACKSON; That's all.

MR. SHORSTEIN: I have no questions Your Honor.

THE COURT: All right. Mr. Jackson, you

OFFICER JOSEPH G. STELMA, JR.,

was called as a witness on behalf of the State and after having been previously duly sworn, then testified as follows:

DIRECT EXAMINATION

BY MR. ARNOLD:

Q. Officer, you previously sworn in this case; is that correct?

A. Yes, I was.

Q. Would you state your name and occupation, please?

A. Officer Joseph G. Stelma, Jr., patrolman, Jacksonville Sheriff's Office.

Q. And what is the nature of your duties as a patrolman, Officer Stelma?

A. Patrolling the areas around Ashley Street on down to Fourth and Jefferson.

Q. All right, sir. Now, I call your attention to November 17, 1971 and I ask you on that day if you were also patrolling?

A. Yes, sir I was.

Q. Allright. Now I call your attention to aproximately 1:00 o'clock or 1:15 that afternoon and I ask you if you had an occasion to observe a white over blue Dodge automobile?

A. Yes, I did.

Q. What if anything did you do when you saw this vehicle? Office Stelma?

A. We were on routine patrol and I was driving the police vehicle. We were headed in the east direction on Union Street when I observed this vehicle passing Union Street on Jefferson headed north at a fast rate of speed. The next thing that caught my eye was the vehicle tag, which was a manufacturer's tag.

Q. Now, why did this tag catch your eye?

A. Well, for several reasons. First of all, in this area of town, especially with three Negro males in it in the area it was headed toward.

Q. All right. And what did you do after noticing this tag?

A. I watched the vehicle headed down Jefferson north and at State Street barely went through the light before it changed still a a high rate of speed. I then put on my emergency equipment and pursued this vehicle north on Jefferson, and at about Orange and Jefferson I then sounded my siren. This vehicle made no attempt to slow down whatsoever. We then kept the equipment on and at about Third and Jefferson my partner, Officer Waxer, then put over the radio that we were pursuing the vehicle at speeds up to eighty and eighty-five miles an hour and this vehicle did not slow down.

Q. Now, you say -- who was riding with you that day?

A. Officer J. A. Waxer.

Q. And after he made this radio call, what did you then do?

A. Well, at the same time just after he had made the announcement, he also put this ag number over the air for them to check through NCIC and FCIC. which is the crime information center, to see if this vehicle was stolen because of it running from us.

Q. All right, sir. And what did you do as far pursuing this vehicle?

A. We stayed in behind the vehicle at speeds up to eighty and eighty-five miles an hour with emergency equipment going. This vehicle made a turn onto West Fourth Street, which would be in the westerly direction from Jefferson. By his time we were in about one hundred feet behind the vehicle. The vehicle then pulled up to the curbing on West Fourth Street about forty-five feet off Jefferson.

Q. All right. Where were you in relation to the vehicle when it stoped?

A. The first time it stopped, about twenty-five, thirty feet. We were just turning off of Jefferson.

Q. All right. Now, you mentioned it stopped. What happened then?

A. It did tsop and we pulled in behind it and the vehicle started off again, out back into the lane of traffic and then backed up to the curbing, which was about fifteen to twenty feet more and hen come to a complete stop.

Q. Okay. What did you do when this vehicle stopped the secodn time?

Q. We put it over the air and brocast that we did have this vehicle stopped a about Fourth and Jefferson andto send us assistance around there because we still didn't know what we had had.

Q. All right, sir. And go on, tell the jury what you did after you --

A. Well, at this time after we made the announcement that we needed assistance, w had a vehicl soped, we then asked if there was any broadcast as yet as to this vehicle being stolen and and we got a return reply of not at this time, they were still checking.

Q. All right, sir. Go ahead and tell the jury what you did as far as this vehicle.

A. We then got out of the police car and walked up to the driver, who was about --

Q. Excuse me. You and who else?

A. Officer Waxer.

Q. Yes.

A. The driver at this time was getting out of the vehicle. We walked up to him and asked for his driver's license, he said he had none.
We placed him under arrest right there on the scene.
driver?

A. We him back, searched him and placed hin in the patrol car.

Q. All right. What did you do then?

A. By this time our assistance had arrived, it would be the other officers.

Q. Who were they?

A. Officer Ritchey and Officer Ward that rode the adjoining beat.

Q. And what did you do?

A. At this time I informed them that we still had not gotten a check back on this vehicle and would they please stand by the vehicle and watch the man that was in the front seat and another fellow who had got out of the back seat and was standing beside the vehicle.

Q. Now, in reference to the person who was -- I believe you testified there was a person sitting in the front seat?

A. Yes, sir.
Q. Where in the front seat?
A. Front right hand side.

Q. And this person that was sitting in the front right side, do you see him in court today?

A. Yes, I do.
Q. Would you point him out?
A. The defendant there behind Mr. Jackson, Mr. Jones.

MR. ARNOLD: All right, let the record show that the witness indicated the defendant, Leo Jones.

BY MR. ARNOLD:

Q. All right. Now I recall your testimony, the driver of the vehicle was under arrest in your patrol car?

A. Yes sir.

Q. All right. Would you pick up again from there, what did you do in reference to this other person who was in the car and the defendant Mr. Jones?

A. Mr. Jones was sitting in the right front seat and the other defendant, who was in the back seat, had gotten out and was standing beside he driver's door outside the vehicle. I informed Officer Ritchey and Officer Ward to please stand by that vehicle and watch both of these till we got a check back from the vehick to see if it was stolen indeed.

Q. What did you -- go on and tell the jury what you did

A. Okay. At this time when we -- Officer Waxer and myself walked back over toward the car, which is the duty of the officers of the Sheriff. and any time you place a person under arrest for any type of violation you must search his vehicle and swear that anything you find in that vehicle is stated on the vehicle impoundedment report. This covers the sheriff's office and wrecker driver in case something should come up missing any time this vehicle is is in impound.

Q. What did you do with the vehicle?

A. We went up to the trunk of the vehicle and asked Officer Ward to pleasep hand me the keys out of the ignition so I could check the trunk for my inventory. He did so, handed me the keys and I opened the trunk.

Q. What if anything did you see in the trunk?

A. Pardon me?

Q. What is first --

A. The first thing that called our attention was two big bags of shrimp, I'd say ten to fifteen pound bags.

Q. Did you see anything else in the trunk?

A. At this time, no sir, that's only thing that caught my attention.

Q. What did you do after you searched this vehicle?

A. Well, the first thing that came into our minds --

Q. I didn't ask what came into your mind. What did you do after you serched this vehicle?

A. After we searched the vehicle?

Q. Yes, sir.

A. We placed the suspect that was standing outside the vehicle, went up to him and informed him that he was under arrest.

Q. All right, sir. Now, in reference -- what did you do with this person after you placed him under arrest? What did you do?

A. We carried him back to the patrol car, I watched him while Officer Waxer searched him. We then placed him in the back seat of the patrol car.

Q. In reference to the defendant Leo Jones, where was he when all this was going on?

A. Well, now, he was sitting in the front seat. At this time that I I informed the other defendant he was under arrest, I looked across over the seat and I told the other defendant, who would be Mr. Jones, I said. "You are also under arrest." I asked Officer Ritchey and Officer Ward would they please remove him from the car and bring him back to our patrol car.

Q. All right. And what did you do -- did they do in reference to --

A. After this time, we had searched our prisoner and put him in the back seat also with the driver, we turned around. When I turned around I saw a scuffle going on between Officer Ritchey and Ward and the defendant, and I ran up to the front of the patrol car because we was about two car lengths away by then and I remember saying to hem. "Be careful, watch him, he's going to try to ge away," or "He's got something," and at this time while struggling was going on Mr. Jones' hand was trying to go down toward his belt area. And during the struggle a small box popped out in between his belt and his pants and the object fell to he ground belo whis feet.

Q. Now, did you actually see this object?

A. Yes, sir, I did.

Q. And what kind of box was it?

A. It was a small match box.

Q. All right. Now, what did you do when you saw this match box?

A. I immediately ran up and I picked the box off the ground and I opened it.

Q. And what did you do with it?

A. After I had opened it and found what it contained –

Q. What was in it?

A. There was four decks of Heroin.

Q. Well, now, you don't know what it was, do you?

A. Well, no, sir.

Q. What did appear to be?

A. Appeared to be Heroin, sir wwrapped up in decks.

Q. And what did you do with it after you opened it?

A. I came back to the patrol car with Officer Ritchey and Ward and the prisoner and Officer Waxer.

SUPREME COURT, U. S.

JAN 14 1974

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-638

LEO JONES,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FIRST DISTRICT, STATE OF FLORIDA

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BRIEF OF RESPONDENT

OPINION BELOW

On April 17, 1973, the District Court of Appeal of Florida, First District, filed its opinion in Jones v. State, Case Number Q-350. Petitioner Jones filed a Petition for Rehearing, which was denied on May 17, 1973. The opinion of the District Court of Appeal of Florida, First District, is reported at 276 So.2d 550. Petitioner Jones filed a Petition for Writ of Certiorari in the Supreme

Court of Florida, which was denied on July 13, 1973. The denial of certiorari is styled Jones v. State, Case Number 43,881, and is reported at 280 So.2d 689.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. Section 1257, which, as pertinent herein, provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> "(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specifically set up or claimed under the Constitution, treaties

or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."

QUESTION PRESENTED

WHETHER THE PETITIONER'S ARREST AND THE SUBSEQUENT DISCOVERY OF A MATCHBOX OF HEROIN VIOLATED HIS RIGHT TO BE FREE FROM AN UNREASONABLE SEARCH AND SEIZURE UNDER THE FOURTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES?

ARGUMENT

A reading of the petitioner's Appendix, pages 4a through 19a will reveal the following facts which were presented to the state trial court at the hearing held on petitioner's Motion to Suppress Evidence, and which were reviewed by the District Court of Appeal of Florida, First District.

Officers Stelma and Waxer of the Duval County Sheriff's Office were on patrol duty together on November 17, 1971. Their second call on November 17, 1971, was to investigate a burglary of the Seaside Poultry Company. The investigation disclosed that a large number of shrimp was missing.

At approximately 1:15 p.m. on November 17, 1971, Stelma and Waxer, while on patrol, encountered a Dodge convertible with three occupants. The Dodge convertible was traveling at a high rate of speed, and the officers began pursuing the vehicle. With lights and siren operative, the Dodge was pursued at speeds up to eighty and eighty-five miles per hour.

Eventually, the Dodge vehicle came to a complete stop. The driver of the vehicle was arrested for attempting to elude police officers, excessive speed (up to eighty-

five miles per hour in a thirty miles per hour zone), reckless driving, and operating a motor vehicle without a driver's license. The officers tried to get a trace-down on the vehicle tag number, via NCIC and FCIC, to see if the Dodge had been stolen, and also requested the services of a wrecker.

Officers Ritchey and Warden arrived at the scene to assist Stelma and Waxer. The petitioner and another occupant of the Dodge were asked to get out of the vehicle, and were guarded by Ritchey and Warden. In conducting a pre-impounding inventory of the Dodge, the officers had occasion to open the trunk of the vehicle. Two large bags of shrimp were discovered therein. Recalling their earlier investigation of a burglary where some shrimp had been stolen, the officers placed the petitioner and the other vehicle occupant under arrest for burglary and auto theft. At this point, and as relevant to the petitioner, the following occurred:

> "Q. Was one of these Jones?
>
> A. Yes, sir, Mr. Jones. At this time, Mr. Jones became very excited and attempted to turn around as if to turn toward the project area at Fourth and Jefferson. Officers Richey and Warden, who were assisting us at the time, grabbed Mr. Jones by each arm. He struggled and I walked over to them, and I said, 'Be careful.

He's going to try to get away.' And at this time in the struggle, Mr. Jones had a small matchbox between his pants and his shirt. It was -- you know, in there, tucked in between there. This popped out of his pants and fell to the ground during the struggle. I picked up the box and opened it, and counted fourteen decks of heroin.

"Q. Now did you or any of the officers actually pull the matchbox out of him or did --

A. No, sir.

Q. You did not take it from him?

A. No, sir.

Q. And from where did you physically take the box?

A. I physically got the matchbox off the ground between his feet.

Q. And did you, after this, turn this box over to investigative at vice squad?

A. Yes, sir, they were on the scene."
(Petitioner's appendix, page 7a)

The petitioner was not arrested until the legal and uncontested pre-impounding inventory search of the fleeing vehicle revealed the presence of what the officers believed to be previously stolen shrimp. When the shrimp was discovered, the officers put all the facts together, and probable cause existed for petitioner's arrest.

In Brinegar v. United States, 338 U.S. 160, 93 L.Ed. 1879, 69 S.Ct. 1302 (1949), this Court discussed probable cause:

> "In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved.
>
> 'The substance of all the definitions' of probable cause 'is a reasonable ground for belief of guilt.' McCarthy v. De Armit, 99 Pa 63, 69, quoted with approval in the Carroll opinion. 267 US at 161, 69 L ed 554, 45 S Ct 280, 39 ALR 790. And this 'means less than evidence which would justify condemnation' or conviction, as

Marshall, Ch. J., said for the Court more than a century ago in Locke v. United States, 7 Cranch (US) 339, 348, 3 L ed 364, 367. Since Marshall's time, at any rate, it has come to mean more than bare suspicion: Probable cause exists where 'the facts and circumstances within their [the officers'] knowledge, and of which they had reasonably trustworthy information, [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed. Carroll v. United States, 267 US 132, 162, 69 L ed 543, 555, 45 S Ct 280, 39 ALR 790.

"These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts

> leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave lawabiding citizens at the mercy of the officers' whim or caprice." Brinegar, supra, at pages 175-176.

Thus, contrary to petitioner's assertion that his arrest was based on suspicion and racial prejudice, when the facts, as known to the officers, are measured in light of the standards expounded in Brinegar, supra, it is clear that his arrest was based on probable cause, and was lawful.

Once the lawful arrest of petitioner had been effectuated, it would have been permissible to conduct a full search of the petitioner's person as an incident to that lawful arrest. Gustafson v. Florida, 42 U.S.L.W. 4068 (U.S. Dec. 11, 1973), and United States v. Robinson, 42 U.S.L.W. 4055 (U.S. Dec. 11, 1973). However, in the instant case such a search did not occur. When advised of his arrest, the petitioner became very excited, and attempted to take his leave from the scene.

A struggle ensued between the petitioner and the arresting officers, who were trying to maintain custody. During the struggle, a small matchbox, which had been tucked between the petitioner's pants and shirt, popped out and fell to the ground. Officer Stelma retrieved the matchbox, opened it, and heroin was found therein.

In summary, the warrantless arrest of the petitioner was lawful, being grounded on facts and circumstances within the arresting officers' knowledge establishing probable cause. No search of petitioner was required to discover the matchbox of heroin which had been concealed upon his person. The seizure of the matchbox of heroin, and its admission into evidence against him in a criminal proceeding, did not intrude on the petitioner's rights under the Fourth Amendment.

CONCLUSION

The judgment of the District Court of Appeal of Florida, First District, in the case sought to be reviewed is in harmony with the Fourth Amendment of the Constitution of the United States as it is plainly written and as it has been interpreted by this Honorable Court. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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PROOF OF SERVICE

This is to certify that three copies of the foregoing Brief of Respondent have been furnished the petitioner's counsel, the Honorable Ernest D. Jackson, Sr., 410 Broad Street, Suite 208, Jacksonville, Florida, 32202, and the Honorable Releford McGriff, 1042 Broad Street, Jacksonville, Florida, 32202, via U.S. Mail, this _____day of January, 1974.

MICHAEL M. CORIN
Assistant Attorney General

OF COUNSEL FOR RESPONDENT